



EQUAL JUSTICE

Through awareness, education and action

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ADDRESSING THE BEST INTERESTS OF IMMIGRANT CHILDREN: FOCUS ON SPECIAL IMMIGRANT JUVENILE STATUS

Ann E. Benson and Diana E. Moller

There is little question that children interacting with the justice system have special needs. Most children have suffered a traumatic experience that put them in contact with the courts, whether they are in dependency, family or juvenile offender courts. However, foreign-born children may have suffered additional trauma prior to encountering the justice system and thus may have additional needs, ranging from obtaining basic identity documents to obtaining lawful immigration status.

Immigrant children may have experienced significant trauma in their home countries or in the circumstances that caused them to come to the United States. Trauma may result from war, political or ethnic persecution, domestic violence or child abuse, crime, poverty, or even gang violence. As a result, it is especially important to look beyond the immediate situation that brought the child into court in order to assess their needs and best interests. For abused, abandoned or neglected immigrant children, Special Immigrant Juvenile Status is an important immigration benefit of which judges and attorneys should be aware.

Washington dependency laws provide that the child's best interests are paramount. Children have the right to health, safety and basic nurturing, which includes a safe, stable, and permanent home.¹ The law requires that permanency planning be done for each

child, which includes preparing for independent living.² All parties involved need to ensure that the children before them will have the future ability to support

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1. RCW 13.34.020.

2. *See* 13.34.145(1)(a).

EQUAL JUSTICE

Equal Justice is the official publication of the Washington State Minority and Justice Commission whose goal is elimination of racial and ethnic bias, where it exists, from our state courts. The newsletter is a communications and networking tool providing information about Commission programs, projects and issues of concern.

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themselves, pursue an education and lead secure and stable lives. For eligible undocumented children, this may require obtaining lawful immigration status.

When children are removed from the home because of an imminent threat to their safety, looking for birth and identity documents is not a high priority. However, children eventually need such documents in order to work and study.³ For foreign-born children, it is particularly important to obtain these documents early, in order to fully assess the child's needs. There may be remedies to give undocumented children lawful immigration status, but they need to be explored early as many immigration benefits are age- or time-sensitive.

Special Immigrant Juvenile Status (SIJS): SIJS is an important mechanism by which certain undocumented children can obtain lawful permanent residence status (a "green card").⁴ With lawful permanent residence, a child has the legal right to live and work in the United States, the right to travel in and out of the United States, and, after five years, the ability to apply for United States citizenship. The child can also apply for a social security number, legal identification and financial aid, among other things. All of these items are key to a child's ability to have a secure and productive future.

Children may be eligible for SIJS if (1) they have been determined to be eligible for long-term foster care, (2) their eligibility is based on abuse, abandonment *or* neglect, *and* (3) remaining in the United States has been determined to be in their best interests. At the time the child receives his/her green card, s/he must still be under the jurisdiction of the State Court, under 21 and unmarried.

Age-Out Concerns: There is a disconnect between the state and federal laws regarding SIJS. Under federal law, a child is eligible for SIJS until the age of 21;⁵ however, under state law, a dependency proceeding cannot be started for a child over age 18 so the dependency must have been established by then. If the SIJS application process has not been completed by age 18, attorneys will have to seek an extension of state court jurisdiction in order to preserve the child's eligibility for SIJS. The time needed to obtain

3. Beyond the dependency laws, having birth and identity documents is considered an important human right. Convention on the Rights of the Child, Art. 7, ¶ 1, Int'l Covenant on Civil and Political Rights, Art. 24, Universal Decl. of Human Rights, Art. 15. Where a child has been [illegally] deprived of the elements of his/her identity, governments are obligated to provide assistance and protection to quickly re-establish the child's identity. Conv. Rts. of the Child, Art. 8, ¶¶ 1-2. Documents for lawful immigrant children are lost when they are removed from the home, just as they are for undocumented kids. Regardless, it is important to find or replace them.

4. Other possible remedies for undocumented children may include asylum, victim of human trafficking, U visas or benefits under the Violence Against Women Act. Contact NWIRP at (206) 587-4009 for further information.

5. 8 U.S.C. 1101(a)(27)(J).

accurate birth or baptismal certificates,⁶ necessary court orders and immigration application processing by United States Citizenship and Immigration Services (formerly INS) makes it essential to identify eligible children as soon as possible after they enter the justice system.

Special Court Orders Required: Since SIJS is a remedy only for abused, abandoned or neglected children, a special order from the court is required, identifying the basis for the dependency and, importantly, finding that it is in the child's best interests to remain in the United States. This is not a typical finding in most dependency courts. It can be based upon, for example, dangerous conditions or a lack of family members to care for the child in the home country or special, emotional, physical, medical and/or educational needs that can be better addressed in the United States. The requirement that a child be eligible for "long-term" foster care does not mean the child must remain in foster care for a long time as children eligible for long-term care may be adopted, returned to their parents or age-out of the dependency system.

What Judges Can Do to Help: Like medical providers and school officials, judges are in a crucial position to ensure that the child's attorney, CASA (Court Appointed Special Advocate) or social service providers are checking into an immigrant child's situation and following through on their special needs and best interests. Judges can further assist by knowing the basics of SIJS and providing the necessary orders that will help a child attain Special Immigrant Juvenile Status.

For further information about Special Immigrant Juvenile Status, please contact Diana Moller, Staff Attorney at the Northwest Immigrant Rights Project at (206) 957-8619 or diana@nwirp.org.



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6. A birth certificate is required in order to apply for SIJS and it can be very time-consuming to obtain accurate records for a child. Some countries lack infrastructure to maintain records or they may have been destroyed by war or natural disaster. Additionally, in some countries, people may believe it advantageous for a child to have a birth certificate showing them as older or younger than they are, so records may have to be corrected.

DISPROPORTIONALITY IN CHILD WELFARE SYSTEMS

Patricia Hall Clark

As previously noted in the June 2006 issue of the *Equal Justice* newsletter¹, approximately 30% of the children involved in Washington's juvenile justice system are or were served by the child welfare system. Within that group, children of color constitute a markedly higher proportion than children of color do of the general juvenile population. Recognizing the correlation between the juvenile justice and child welfare systems, King County has undertaken an initiative to address that disproportionality of children of color in our child welfare system.

Although such disproportionality exists across the nation, very few jurisdictions have conducted studies on the local level and even fewer have begun implementing strategies to correct the problem and eliminate the causes. King County, however, has moved forward to develop and implement corrective strategies to address the following realities:

- Children of color constitute one-third of the King County child population, but make up more than one half of all children currently in foster care in King County.
- A disproportional number of African American and Native American children are involved at nearly every decision point in the child welfare system.
- The longer children remain in the foster care system the greater the disproportional number of children of color becomes.

African American and Native American children represent only 8% of King County's juvenile population; yet, they constitute 25% of the cases referred to the child welfare system and 33% of the children placed outside of their home. By age four approximately 50% of these children are in foster care. A male African American child entering the system is more likely to "age out" of the child welfare system at the age 18 than other children.

1. See Clark, *Disproportionality in Juvenile Courts: A Local Response*, *Equal Justice*, Vol. 10, No. 1.

If the foster care system was producing healthy, educated adults, the disproportional presence of children of color within it would be less distressing. However, the following sobering statistics demonstrate that the impact of long-term foster care is often very negative:

- Former foster children are twice as likely as veterans of the Iraq war to suffer post-traumatic stress disorder (PTSD)
- Only 1.8 percent of former foster children obtain at least a college bachelor's degree compared with 24 percent of their peers
- One-third of former foster children have incomes below the poverty level, one third have no health insurance, and nearly one quarter have experienced homelessness after leaving foster care

The Child Welfare Institute of America's 1999 study, *National Child Welfare*, states, "there is no higher incidence of abuse or neglect in any racial or ethnic group" (Thomas Morton, Child Welfare Institute of America, 1999). We must, therefore, assume that the disproportionately high presence of children of color in foster placements is the result of other factors.

In 2004, the King County Coalition on Racial Disproportionality, a multidisciplinary group of more than forty stakeholders, representing public child welfare, the courts and legal system, private agencies and other community organizations, was formed to guide efforts to develop a system in which children of color are proportionately represented and have case outcomes comparable to Caucasian children in the system.

The Coalition has developed three preliminary strategies designed to address disproportionality:

Champions for Permanence: This initiative recruits students from the Child Welfare Training and Advancement Program at the University of Washington to help identify permanency options for Native American and African American children who have been in foster care for more than two years and for whom no permanency plan has been developed.

Benchmark Hearings: The Juvenile Division of the King County Superior Court has established additional, extended "benchmark" hearings designed to stimulate and monitor progress toward permanency, explore and maintain better services for children while

in foster care, and insure improved and more timely planning and preparation for the transition of children out of foster care. In its pilot year, the court has incorporated benchmark hearings for children referred from the Champions for Permanence program.

Breakthrough Series Collaborative: The Breakthrough Series Collaborative is a tested quality improvement methodology adapted from healthcare, originating with the Institute for Healthcare Improvement (IHI) and the Associates in Process Improvement (API), in 1995. The use of this innovative methodology has demonstrated dramatic improvements in focused practice areas over a short period of time and holds promise for similar successes in child welfare and foster care systems. A Breakthrough Series on disproportionality is being tested in King County's Indian Child Welfare Unit.

There are, as yet, no tried and proven methods of reducing or eliminating disproportionality in the child welfare system. However, King County is moving forward with initiatives to address the issue, which will undoubtedly be evaluated to determine their effectiveness. Any and all successes or failures will be shared with a nation struggling with similar issues and attempting to best serve the interests of all of our children.



Patricia Hall Clark, is a King County Superior Court Judge at Juvenile Court in Seattle. She is also the Judicial Fellow for the Seattle/King County Reclaiming Futures Project and chairs the Adult and Juvenile Disproportionality Committees.

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BATTERED IMMIGRANT WOMEN IN FAMILY LAW PROCEEDINGS

Leticia Camacho

Refugee and immigrant women face unique obstacles to escaping family violence, sexual assault, and/or trafficking situations. Language barriers, isolation, immigration issues, lack of culturally appropriate services, and their perception of the legal system often trap refugee and immigrant women and children in abusive situations. Once they have made it into the courthouse, there are several issues to consider when battered immigrant women appear in family law proceedings. This article will discuss four of these

issues: safety, signage, interpreters, and explanation of the court's decision, and suggest some solutions to address them.

Safety: Battered immigrant women are often terrified about their safety. This is the case whether the hearing is for an Order for Protection or another family law proceeding that involves the alleged batterer. Fear is magnified for battered immigrant women because of the isolation that they may have experienced in trafficking cases or in cases where they willingly followed their abuser but now find themselves alone, with no relatives, and in a new country where they do not speak the language. There is also a degree of fear and shame in seeking legal action against their abuser in sexual assault cases where the abuser may have repeatedly told them that it was their duty to accept such behavior. Finally, there is often the fear that the other party will leave the country and kidnap the children after a legal action is filed. Having an officer in the courtroom helps to alleviate some of their fears but it is not enough to overcome the stress from having to confront their abuser. In addition to providing security, having clearly defined separate spaces for the petitioner and for the respondent and having an acknowledgment from the court that domestic violence is an alleged issue in the case puts both parties on notice and helps diffuse the tension in the courtroom.

Signage: An important consideration in terms of access to the courthouse (both when the parties enter the courthouse and when they are done with their hearing) is whether there are any signs in the building, whether these signs are in obvious places and whether these signs are written in languages other than English. The parties may be at the courthouse for the first time and have no idea where to go inside the courthouse. Once the court enters an order, the parties may have to go to other departments within the courthouse. It may not be obvious to them where to go without signs within the building written in more than one language.

Interpreters: It is crucial (and required by law)¹ to provide an interpreter for any immigrant party who does not speak English. Even when parties can speak limited English, they often do not speak it well enough to understand the proceedings other than in their native language. Having only one interpreter for both parties should be avoided because it is confusing to the parties and it places the interpreter in an ethical dilemma, as interpreters are required to avoid any conflict of interest. Ideally, for cases where the trial is longer than

1. RCW 2.42

one day, the same interpreter, and one for each party should be used on all trial days for purposes of continuity in the interpretation and because it will mean one less change in an otherwise stressful situation for the parties.

Explanation of Court Decision: Once the proceeding is underway, it is important not to assume that the parties understand what is going on, even with the assistance of an interpreter. Battered immigrant women are unfamiliar with the law and may be so intimidated by the process that they are unable to effectively state their case in court. Unless the parties are represented, the parties may not have known or understood the documentary evidence that was required of them to substantiate their petition and/or motion. Also, parties may be fearful about testifying due to rumors from relatives and/or friends or due to threats by the other party about the impact that an appearance in the courtroom may have on their safety or on their immigration status. Finally, it is very unlikely that the parties will fully understand what happened during the proceeding or what the ruling means. Even if the parties inform the court that they do not have any further questions, the best solution is to read out loud and explain the actual written ruling to them, provide a written copy in their own language, and answer their questions after that additional review. Without this explanation, it is possible that the parties will walk out of the courthouse without an understanding of what they are expected to do, according to the ruling from the court.

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Leticia Camacho is an attorney with the Domestic Violence Community Legal Project at the Northwest Justice Project in Seattle.

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GUARDIANSHIPS AND THE NEED FOR CULTURALLY COMPETENT CERTIFIED PROFESSIONAL GUARDIANS

Kimberley D. Prochnau and Karen A. Clark

James agreed with Adult Protective Services that something needed to be done about his elderly mother, who was suffering from the beginning signs of dementia. A cousin had been staying with his mother, but James had noticed family heirlooms missing from the house and, although his mother was very frugal with her money, there never seemed to be any food in the refrigerator but there was plenty of beer. Worst of all, the cousin's friends were starting to "crash" at the house and James

would find his mother holed-up in her bedroom afraid to come out.

Although many families care for their loved ones without any formal court process, a guardianship may be necessary if, for example, the person is unable to consent to medical care or is being financially exploited. A person may be deemed “incapacitated” as to their person if the court finds that he or she is at significant risk of personal harm based on a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. Likewise, they may be deemed incapacitated as to their estate if the court finds them to be at risk of financial harm based on a demonstrated inability to adequately manage property or financial affairs¹.

A guardianship petition can be filed by anyone on behalf of an alleged incapacitated person. Once the petition is filed, a guardian ad litem (GAL) is appointed to investigate and make recommendations and a medical report is obtained.

James filed a petition for guardianship asking that he be appointed as guardian. His sister objected; they had never gotten along and she suspected he wanted the house for himself. In the end, James decided he didn't want the stress and so asked that a certified professional guardian be appointed.

The GAL will recommend who should serve as guardian if the GAL believes the allegedly incapacitated person (AIP) to be incapacitated and there are no less restrictive alternatives. The court may decide to appoint a certified professional guardian instead of a family member or friend; often this occurs because there are no family members or close friends who have the ability and time to carry out the statutory duties of a guardian or it is deemed advisable, due to family conflict, to have a neutral person in charge of the guardianship.

The one thing James and his sister could agree on was that their mother would be more comfortable with a guardian of the same ethnic background. Their mother had grown up in the south under the Jim Crow laws. Her family had been swindled out of their land by a crooked loan shark. She was very proud of the modest home she and her husband had managed to buy and was likely to be suspicious of a guardian not from her background. However, the guardian ad litem was unable to find a professional guardian with a similar ethnic background who was available to serve.

According to the 2000 Census, 27% of King County residents are from communities of color. King County also has significant numbers of refugees and immigrants, many of whom do not speak English as a first language. Approximately 17% of King County residents are foreign born and approximately 19% of King County residents over the age of five speak a language other than English at home. Statistics are not currently available on the ethnic and cultural makeup of Washington’s professional guardians. However, anecdotally it appears that very few persons of color currently are certified as professional guardians.

The guardian ad litem ultimately recommended a professional guardian who she knew to be sensitive and skilled in cultural competency issues. Once appointed, the professional guardian worked to build trust with James’ mother and her family. The simplest solution for James’ mother would have been to move her to an adult family home and sell her house to pay for the cost of care. The professional guardian, however, understood that James’ mother loved having family around her and was uncomfortable being around strangers. And the one thing her children agreed on was that, in their culture, family takes care of family. Having strangers take care of their mother would be a shameful thing. In the end, the professional guardian mediated a solution that would allow another family member to be paid to provide live in care giving for their mother.

The importance of good interpersonal skills cannot be emphasized enough. Most times, the success of the guardianship itself depends on the guardian’s ability to interact with and relate to the ward and his or her family. The guardian is required to consult with the ward and to respect and, when feasible, to follow his/her wishes and desires.

A guardian is called on to make many lifestyle decisions for the incapacitated person, including where they live, with whom they associate, and in what kind of activities they engage. To make competent decisions about such issues, the guardian must be familiar with the cultural norms, values, and beliefs of the incapacitated person’s family and culture. The policy of the guardianship laws is to “protect the liberty and autonomy of all people of this state and enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person.”² Fundamental to carrying out this mission is ensuring that the cultural heritage and beliefs of the incapacitated person are honored. Cultural competence and a diverse pool of certified

1. RCW 11.88.010.

2. Frontline Connections: A Quality Improvement Center to Improve Child Protection Services in the Northwest.

professional guardians are critical to fulfilling the intent of the guardianship laws.

Cultural competency skills can be improved from various classes that are available to guardians, but it can also be enhanced by strong listening and communication skills. Many times the incapacitated person's comfort level with the proposed guardian is evident from subtle comments and bodily language. No matter the allegations, the guardian should approach the incapacitated person and the family in a nonjudgmental, supportive manner. Often, the incapacitated person will want to work toward maintaining a strong connection to the family, the family home, and the community where s/he has resided. The guardian may disagree with this choice, but if there is no safety issue, it should be respected.

As Americans, in general, live longer and persons with severe disabilities increasingly live more independent lives, the need for professional guardians and trustees, guardian ad litem, and attorneys who specialize in elder law issues can be expected to increase. More persons of color are needed to fill these roles.

For more information about certified professional guardians, including the application process, click on the link for Professional Guardian Certification Program under Programs and Organizations at: www.courts.wa.gov/programs_orgs.



Kimberley D. Prochnau is a Court Commissioner in King County Superior Court and a member of the Certified Professional Guardian Board. Karen A. Clark is a Seattle attorney and guardian ad litem.

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CHAMPIONS FOR JUSTICE

Ester Huey

Ester Huey has been the director of the South East Community Center in Yakima, Washington, since 1990. She is best known for her advocacy of the safety and well-being of all children and is known for helping develop an effective gang prevention program at the center, which has been adopted by many cities in the State of Washington. She has also led the Substance Abuse Coalition in her area during this time and previously worked at Yakima Valley Occupation and Industrialization Center. She has been able to recruit

safe homes for abused and neglected children in her community and has even opened her own home to 24 children, over the years. The South East Community Center is located in an economically depressed area and provides services and resources to many Hispanic and African Americans who live there. The center houses the local office of the NAACP and the Children of Incarcerated Parents Program.

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SPOTLIGHT ON COMMISSION MEMBERS

Bonnie J. Glenn

Ms. Bonnie J. Glenn, Deputy Chief of Staff King County Prosecutor's Office, was one of three women to be recognized for her commitment to service, community outreach and social justice at the 2006 Women of the Year awards, presented annually by the Women's Law Caucus of Seattle University School of Law.

Judge Richard F. McDermott, Jr.

Judge Richard F. McDermott, Jr., King County Superior Court, was elected President-Elect of the Superior Court Judges' Association on March 24, 2007.

Judge Gregory D. Sypolt

Judge Gregory D. Sypolt, Spokane County Superior Court, was elected to the Superior Court Judges' Association Board of Trustees on March 24, 2007.

Judge Dennis D. Yule

Judge Dennis D. Yule, Benton and Franklin Counties Superior Court, received a Distinguished Service Award in June 2006 from the Southeastern Washington Association of School Administrators in recognition of his work in juvenile programs, including his leadership in establishing the Tri-Cities Youth and Justice Forum. The forum, an annual event in its fifth year, is co-sponsored by the Minority and Justice Commission, Educational Service District 123, Columbia Basin College and the WSBA Young Lawyers Division and brings over 180 middle and high school students together for a day with justice system professionals.

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